

REMARKS

This is in response to the Office Action dated May 11, 2010. Reconsideration in view of the following is respectfully requested.

Entry and consideration of the present amendment is appropriate here, as the amendment places the case in condition for allowance.

Claim 18 is amended to address the objection under 35 U.S.C. 112. It should now be clear that the claim limitation refers to oxygen content as measured at a time, four week post-loading.

Claim 17 is amended to indicate that the pressure is “at” 250-400 mbar O₂. See page 2, line 11 for support.

Claims 17, 20, 23, 24, 30 and 31 stand rejected under 35 USC 103 as being obvious over Stora. It is the examiner’s position that Stora (as evidenced by Critical Care Medicine Tutorial) would contain oxygen at atmospheric pressure, i.e. 211 mbar. Amended claim 17 clarifies that the required partial pressure of the oxygen loading must be in the range of 250-400 mbar, which is well above atmospheric pressure.

Stora teaches a perfume composition, the focus of which is to address solubility problems between oil and water-based ingredients, while retaining transparent characteristics. In this regard, the focus of Stora is on a precise correlation of refractive indices of the various ingredients. Stora teaches that the solubility issue may be positively affected by the presence in the oily phase of , inter alia, perfluorinated compounds [column 4, lines 48-51]. The examples of Stora teach perfluorodecaline at between about 2-4 %.

The claimed invention is a cosmetic formulation comprising an oxygen carrier system for

delivering gaseous oxygen to the skin. A perfluorinated hydrocarbon as oxygen carrier is present in the formulation at no greater than 1% (as up to 1% of the oxygen carrier system, wherein the carrier system is itself present in the formulation at no greater than 10%), well below the teaching of Stora. Further, the claimed composition is loaded with gaseous oxygen up to partial pressure of 250-400 mbar.

As Stora is concerned with solubility and transparency of an oil water emulsion by way of control of refractive indices of the two phases, there is simply no motivation or suggestion to provide for a precise, limited range of perfluorinated hydrocarbon, which in turn supports a loading of gaseous oxygen at an elevated level. Accordingly, neither claim 17 nor any claims dependent thereon (and hence further limiting thereof) can be considered to be obvious over Stora.

Claims 18, 21 and 22 stand rejected as being obvious over the above reference, further in view of Gross. Examiner interpreted the prior version of claim 18 to have a process step for additional oxygen loading. It is now clarified by amendment that the oxygen content is a limitation, measured at four weeks post-loading.

The examiner admits that Stora does not teach the specific quantitative loading of oxygen of the claimed invention. Gross is cited for its teaching of using fluorocarbons as oxygen carrier for a cosmetic composition. The fluorocarbons of Gross are provided as part of a phospholipid aggregate. The deficiency of phospholipids as oxygen carrier has already been discussed by applicant at page 2, line 25 of the specification, in that such a system does not resolve the problem of retaining the loaded oxygen over time.

It is truly surprising that loading of oxygen by way of a fluorinated hydrocarbon system in

the presence of silicone polymers acts to preserve the retention of oxygen over time. Neither Stora nor Gross alone, nor a combination of the two, suggest that the presence of these two elements will resolve the issue of oxygen retention. Applicant refers to the prior submitted Rule 132 Declaration, comparing formulations prepared with and without silicone polymer in terms of oxygen retention over time. As demonstrated in the Declaration, it is clear that the presence of silicone polymer acts synergistically with the perfluorinated hydrocarbon to significantly increase oxygen retention over time. Accordingly, the invention as set forth in claim 18 is not obvious over the cited combination.

Claim 19 stands rejected as being obvious over Stora in view of Gross and Pella. As claim 19 is further limiting of claim 17, and Pella does nothing to cure the deficiency of the Stora/Gross combination, claim 19 is also allowable. Furthermore, Pella teaches completely new vitamin E derivatives of formula I, as there are numerous defects with the use of vitamin E itself (column 2, lines 22-35). Claim 19 is limited to specific tocopherol derivatives. In addition, applicant does not add tocopherol derivative to the claimed system for anti-oxidative effect; rather, they are added to improve the stability of the system in silicon oil-containing formulations (page 3, line 11). Thus, there is no suggestion or motivation in Pella to have added such derivatives to a composition of Stora.

Claim 26 stands rejected over Stora, in view of Lu. As Lu does not add anything to cure the deficiencies of Stora, as outlined above, claim 26 is also allowable over this combination of references.

Wherefore, allowance of all pending claims is earnestly solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires any further extension of time, Applicants respectfully requests that this be considered a petition therefore. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

NORRIS MCLAUGHLIN & MARCUS, P.A.

By /Bruce S. Londa/
Bruce S. Londa - Reg. No. 33,531
875 Third Avenue, 8th Floor
New York, New York 10022
Tel. 212-808-0700